

## Republican National Committee

January 30, 2017

### VIA ONLINE SUBMISSION

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Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

### **Re: Comment on Rulemaking Petition (REG 2014–10)**

The Republican National Committee (“RNC”), by and through counsel, submits this comment on the Petition for Rulemaking (“Petition”) that Perkins Coie LLP filed with the Federal Election Commission (“FEC” or “Commission”) on January 8, 2016, which requests that the FEC undertake a rulemaking to accomplish two ends. First, it asks that the FEC enact regulations governing convention committees consistent with the Commission’s conclusions in Advisory Opinion 2014-12 and also remove any regulations rendered obsolete by Congress’s elimination of the public-financing regime for presidential nominating conventions. Second, it requests that the FEC adopt regulations implementing the amendments made to the Federal Election Campaign Act of 1971 (“FECA” or “Act”) by the Consolidated and Further Continuing Appropriations Act, 2015 (“Appropriations Act”), which established new accounts for the national committees of a political party.

If the FEC undertakes the proposed rulemaking,<sup>1</sup> it should do so as part of a cohesive initiative aimed at strengthening America’s political parties. Given Commissioners’ statements in recent years about their desire to help party committees,<sup>2</sup> such a rulemaking should be focused only on

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<sup>1</sup> As addressed below, regardless of whether it takes up the Petition’s rulemaking request in full, the FEC should remove any current regulations in 11 C.F.R. Part 9008, subpart A, that became obsolete when Congress eliminated public financing of presidential nominating conventions through the Gabriella Miller Kids First Research Act, Pub. L. No. 113-94, 128 Stat. 1085 (2014).

<sup>2</sup> See, e.g., FEC Open Meeting Audio (Oct. 9, 2014), <http://www.fec.gov/audio/2014/2014100905.mp3>; see also Forum Audio at 119:42–126:07 (2014), [http://www.fec.gov/audio/2014/20140604\\_FORUM.mp3](http://www.fec.gov/audio/2014/20140604_FORUM.mp3) (closing statements of Commissioners Goodman, Ravel, Walther, and Weintraub); Lee E. Goodman, *A Time to Revive the Party*, Wash. Examiner (Nov. 16, 2015). At the October 9, 2014 open meeting, Commissioner Goodman stated that there is “raging agreement . . . on the Commission in support of the parties in general”; Commissioner Ravel expressed her belief that national party committees “are very important parts of our participatory democracy”;

improving – not restricting – the political party system consistent with the considerations presented in the Petition and following discussion.

## **I. CONVENTION COMMITTEES**

### **A. Convention Committees are National Committees of a Political Party under FECA**

As explained in the Petition, after Congress eliminated the public-financing scheme for presidential nominating conventions in April 2014,<sup>3</sup> the national party committees lacked access to public funds and were forced to seek private sources of funding subject to FECA’s source prohibitions and contribution limits. In August 2014, the RNC and Democratic National Committee (“DNC”) jointly submitted an advisory opinion request to the FEC asking for guidance on how to raise necessary private funding in compliance with the law.<sup>4</sup>

In Advisory Opinion 2014-12, the FEC concluded that FECA permitted the RNC and DNC to:

each establish a convention committee to raise and spend federal funds for convention expenses under a separate contribution limit *because these convention committees would be “national committees” within the meaning of the Act*, and Commission regulations provide that each “national committee” is subject to its own contribution limits.<sup>5</sup>

Indeed, the Commission found that such “convention committees . . . satisfy essentially all of the factors that the Commission considers in determining national committee status.”<sup>6</sup> As a result, convention committees were deemed “equivalent to the [national] parties’ House and Senate campaign committees for purposes of . . . contribution limits” – meaning contributions raised or spent by them would be separate from any contributions raised or spent by the DNC or RNC, or any other national party committee.<sup>7</sup> Nothing has occurred since 2014 that changes this binding legal conclusion. In fact, the convention committees established by the RNC and DNC have been filing monthly reports as national committees as directed by the Reports Analysis Division.

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Commissioner Weintraub expressed “how much [she would] like to support the party committees” and looks to give them “breathing space” under the law when able; and Commissioner Walther indicated he is “worried about” the state of political parties, and that he is “philosophically . . . supportive of ways to strengthen” parties.

<sup>3</sup> See Pub. L. No. 113-94, 128 Stat. 1085 (eliminating taxpayer financing of political party conventions).

<sup>4</sup> See Advisory Opinion Request of RNC and DNC (Aug. 15, 2014), <http://saos.fec.gov/aodocs/1303612.pdf>.

<sup>5</sup> Advisory Opinion 2014-12, at 2 (emphasis added).

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 6.

## **B. Convention Committee Regulations**

Regardless of whether the Commission undertakes a broader rulemaking based on the Petition, it should remove any current regulations in 11 C.F.R. Part 9008, subpart A, that have become obsolete because of Congress's elimination of public financing of party committees' presidential nominating conventions – such as provisions related to audits of convention committees and host committees.<sup>8</sup>

Any additional rulemaking efforts to adopt new regulations and amend current regulations to address convention committees should do so in a manner consistent with Advisory Opinion 2014-12 and the Petition.<sup>9</sup>

## **II. PARTY SEGREGATED ACCOUNTS UNDER THE APPROPRIATIONS ACT**

The Appropriations Act amended FECA by creating new accounts for national committees of a political party. National party committees such as the RNC may establish three new segregated accounts: a “Convention Account,” a “Headquarters Buildings Account,” and a “Legal Proceedings Account.”<sup>10</sup> These new accounts supplement the national party committees' general federal operating accounts and, like national party committees' recount funds, are subject to their own contribution limits and spending restrictions.<sup>11</sup> National congressional campaign committees of a political party, because they do not have presidential nominating conventions, may establish only Headquarters Buildings Accounts and Legal Proceedings Accounts in addition to their general operating accounts. All of the new segregated accounts may raise contributions in amounts up to three times the current limit under 52 U.S.C. § 30116(a).<sup>12</sup>

### **A. Convention Accounts**

Under 52 U.S.C. § 30116(a)(9)(A), national committees of a political party (other than a national congressional campaign committee of a political party) may establish an account for funds “used solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, except that the aggregate amount of expenditures the national committee of a political party may make from such account may not exceed \$20,000,000 with respect to any single convention.” If the FEC initiates a rulemaking to adopt new regulations implementing this provision, the regulations should reflect the following considerations.

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<sup>8</sup> See Petition at 16–17. However, as the Petition notes, certain regulations in that subpart were unaffected by the elimination of public funding and thus should be kept or amended. And, except for § 9008.54, all regulations under subpart B (concerning host committees and municipal funds representing a convention city) should remain in place. *Id.*

<sup>9</sup> See *id.* 15–16.

<sup>10</sup> See 52 U.S.C. § 30116(a)(9).

<sup>11</sup> Recount funds, however, have lower contribution limits identical to those of the committees' operating accounts.

<sup>12</sup> 52 U.S.C. § 30116(a)(1)(B).

- *Permissible Expenses.* Prior to Congress’s elimination of public financing of presidential nominating conventions in 2014, the national party committees could establish “convention committees” to receive grants of public funds from the U.S. Treasury to defray costs of operating the party committees’ presidential nominating conventions.<sup>13</sup> These public funds could be used to pay various costs associated with holding the presidential nominating conventions as provided under 11 C.F.R. § 9008.7(a) – including infrastructure and the operating costs of administering the nominating election – but not to support candidates or general campaign activity.<sup>14</sup> In passing the Appropriations Act, Congress made clear that it intended to allow funds in the new Convention Accounts to be used to defray all expenses “related to a Presidential nominating convention,” including “in the same manner as the former public funds could have been used.”<sup>15</sup> Therefore, any new regulations should define “expenses incurred with respect to a presidential nominating convention” as any expenses related to a presidential nominating convention, which should include – but not be limited to – the permissible uses of public funds for conventions under 11 C.F.R. § 9008.7(a).<sup>16</sup>
- *Fundraising Costs.* Consistent with express statements of congressional intent, any new regulations should provide that national party committees may use funds in their Convention Accounts (as well as their general accounts) to pay the costs of fundraising for the account.<sup>17</sup>
- *Expenditure Limitations.* The Appropriations Act places a \$20,000,000 limit on expenditures made from a Convention Account “with respect to any single convention.”<sup>18</sup> Any new regulations should provide a list of payments not falling within this limitation – including, but not limited to, fundraising costs, legal and accounting services, and expenditures made by host committees and government agencies or municipal funds in accordance with 11 C.F.R. §§ 9008.52 and 9008.53.<sup>19</sup> All such expenses fell outside of the public-financing scheme and, therefore, are not properly subject to a spending cap, particularly to the extent they are not incurred with respect to any single convention. Any

<sup>13</sup> See 11 C.F.R. § 9008.3(a)(2) (“The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party’s presidential nominating convention. . . . The convention committee shall receive all public funds to which the national committee is entitled.”).

<sup>14</sup> See *id.* § 9008.7(b) (prohibited uses of public funds provided for presidential nominating conventions).

<sup>15</sup> See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).

<sup>16</sup> See Petition at 4.

<sup>17</sup> See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid); see also Petition at 13.

<sup>18</sup> 52 U.S.C. § 30116(a)(9)(A).

<sup>19</sup> Cf. 11 C.F.R. § 9008.8(b) (listing payments that were not subject to expenditure limit under public-financing scheme).



new regulations should also provide that any expenditures for permissible Convention Account expenses made from either a national party committee's general operating accounts or from a convention committee discussed in Part I, *supra*, that are not reimbursed by the national party committee's Convention Account do not count against the expenditure limit.<sup>20</sup>

- *Prohibited Uses.* Any new regulations should provide that national party committees may not use funds in their Convention Accounts to make contributions or independent expenditures or pay for general campaign expenses.<sup>21</sup>
- *Spending from General Account.* Any new regulations should provide expressly that, in addition to funds in their Convention Accounts, national party committees may use funds in their general operating accounts to pay for all expenses related to their presidential nominating conventions. National party committees, moreover, should be expressly permitted in any new regulations to reimburse their general accounts out of their Convention Accounts at any point in time for any permissible convention-related expenses paid from their general accounts instead of their Convention Accounts.<sup>22</sup>

#### **B. Headquarters Buildings Accounts**

Section 30116(a)(9)(B) of 52 U.S.C. provides that national party committees may establish separate segregated accounts for funds “used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds from which were used to defray such expenses, or otherwise to restore funds used to defray such expenses (including expenses for obligations incurred during the 2-year period which ends on the date of the enactment of this paragraph).” If the FEC should begin a rulemaking to adopt new regulations implementing this provision, the new regulations should embody the following principles.

- *Definition of a “Headquarters Building of a Party.”* Any new regulations should define a “headquarters building of a party” to be any building, located anywhere in the United States, from which operations or activities of a political party are managed, directed, or controlled. Such a definition would acknowledge Congress’s explicit recognition of the reality that national party committees – much like any business – often operate from multiple headquarters buildings around the country.<sup>23</sup>

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<sup>20</sup> See Petition at 5.

<sup>21</sup> See *id.* at 4.

<sup>22</sup> See *id.* at 4–5.

<sup>23</sup> See *id.* at 9.

- *Permissible Expenses.* National party committees should be permitted to use their Headquarters Buildings Accounts to pay for any expenses reasonably related to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings. As the Petition explains, the text, structure and purpose of 52 U.S.C. § 30116(a)(9)(B) prohibit a simple recodification of the FEC’s previous authorities interpreting the pre-Bipartisan Campaign Reform Act of 2002 (“BCRA”) building-fund exemption. Any implementing regulations thus should recognize that permissible costs include all “operating” expenses – which should be defined to include any expenses related to the operation of, or necessary to administer, a headquarters building. Operating expenses should include, but not be limited to, payments of property taxes and assessments, rent and leases, maintenance, hardware, file and data storage, software, security, utilities, information technologies, materials and supplies, and salaries of certain individuals responsible for operating a headquarters building. The RNC, moreover, agrees with the Petition’s views on what types of expenses should constitute permissible “construction,” “purchase,” “renovation,” and “furnishing” expenses in any new regulations.<sup>24</sup>
- *Permissible Repayment of Mortgages and Loans.* Funds in Headquarters Buildings Accounts may be used “to repay loans the proceeds of which were used to defray” costs “with respect to the construction, purchase, renovation, operation, and furnishing” of headquarters buildings. Accordingly, any new regulations should explain that payments for mortgages and any other loans used to finance such costs may be paid from the account.<sup>25</sup>
- *Prohibited Uses.* Any new regulations should provide that national party committees may not use funds in their Headquarters Buildings Accounts to make contributions or independent expenditures or pay for general campaign expenses.<sup>26</sup>
- *Fundraising Costs.* Consistent with express statements of congressional intent, any new regulations should provide that national party committees may use funds in their Headquarters Buildings Accounts (as well as their general accounts) to pay the costs of fundraising for the account.<sup>27</sup>
- *Spending from General Account.* Any new regulations should provide that, in addition to funds in their Headquarters Buildings Accounts, national party committees may use funds in their general operating accounts to pay for all expenses related to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings.

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<sup>24</sup> See *id.* at 6–8.

<sup>25</sup> See Advisory Opinion 1998-08 (Iowa Democratic Party); Advisory Opinion 1993-09 (Mich. Republican State Committee) (mortgage payments from party building funds); see also Petition at 8–9.

<sup>26</sup> See Petition at 10.

<sup>27</sup> See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid); see also Petition at 13.

National party committees, moreover, should be permitted in any new regulations to reimburse their general accounts out of their Headquarters Buildings Accounts at any point in time for any permissible headquarters buildings expenses paid from their general accounts instead of their Headquarters Buildings Accounts.<sup>28</sup>

### C. Legal Proceedings Accounts

Under 52 U.S.C. § 30116(a)(9)(C), national party committees may establish separate segregated accounts for funds “used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.” Once again, if the FEC should adopt new regulations to implement this provision, those regulations should reflect the following principles.

- *Permissible Expenses.* Any new regulations defining permissible expenditures from the Legal Proceedings Accounts should reflect Congress’s “inten[t] to permit the national parties to use [these accounts] for costs, fees, and disbursements associated” not only with election recounts and contests, but “with other *legal proceedings*” as well.<sup>29</sup> National party committees should be able to use the funds within their Legal Proceedings Accounts to pay all costs associated with any legal proceeding – no matter the subject matter, forum, or parties. Permissible expenses should include, but not be limited to, costs associated with preparation for legal proceedings, staff salaries, administrative and overhead expenses, attorneys’ fees, settlements, judgments, administrative penalties, and other payments to third parties associated with any legal proceeding.<sup>30</sup> Any implementing regulations should reflect only the expanded allowances of the new accounts and not in any way curtail prior FEC precedent on party recount funds.<sup>31</sup>
- *Prohibited Uses.* Any new regulations should provide that national party committees may not use funds in their Legal Proceedings Accounts to make contributions or independent expenditures or pay for general campaign expenses.<sup>32</sup>
- *Fundraising Costs.* Consistent with express statements of congressional intent, any new regulations should provide that national party committees may use funds in their Legal Proceedings Accounts (as well as their general accounts) to pay the costs of fundraising for the account.<sup>33</sup>

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<sup>28</sup> See Petition at 9.

<sup>29</sup> 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner) (emphasis added); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (emphasis added).

<sup>30</sup> See Petition 11–12.

<sup>31</sup> See *id.* at 12.

<sup>32</sup> *Id.*

<sup>33</sup> See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid); see also Petition at 13.

- *Spending from General Account.* Any new regulations should provide that, in addition to funds in their Legal Proceedings Accounts, national party committees may use funds in their general operating accounts to pay for all expenses related to legal proceedings. National party committees, moreover, should be expressly permitted in any new regulations to reimburse their general accounts out of their Legal Proceedings Accounts at any point in time for any permissible legal expenses paid from their general accounts instead of their Legal Proceedings Accounts.<sup>34</sup>

#### **D. Regulations Applicable to All Segregated Accounts**

If the FEC commences a rulemaking, it also should adopt regulations applicable to all of the segregated accounts of national party committees addressing the following issues.

- *Coordinated Party Expenditures.* Any new regulations should provide that expenditures made from any of the segregated accounts of national party committees are not allocable to candidates under 11 C.F.R. § 106.1 or treated as coordinated expenditures and subject to the coordinated party expenditure limitations under 52 U.S.C. § 30116(d)(2)–(4).<sup>35</sup>
- *Transfers.* Any new regulations should permit national party committees to transfer funds from their general operating accounts to any of their segregated accounts at any point in time. Likewise, they should permit national party committees to transfer funds from their general accounts to any segregated account of any other national party committee of the same political party. Any new regulations should also expressly allow national party committees to transfer funds from their segregated accounts to the same segregated account of any other national party committee of the same party, as well as from their Legal Proceedings Accounts to recount funds of state party committees.<sup>36</sup>
- *Undesignated Contributions.* Any new regulations should address undesignated contributions received by national party committees. The regulations should permit national party committees to, within their discretion, deposit undesignated contributions into any of their accounts, as long as doing so would not exceed applicable contribution limits. Any new regulations, moreover, should permit national party committees to transfer undesignated contributions from one segregated account to another of its segregated accounts, as long the donor has not given the maximum contribution to the account receiving the transfer.<sup>37</sup>

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<sup>34</sup> See Petition at 12.

<sup>35</sup> See *id.* at 4, 10, 12–13.

<sup>36</sup> See *id.* at 13.

<sup>37</sup> See *id.*



- *Redesignations.* Any new regulations should allow national party committees to obtain redesignations of contributions designated to either their segregated accounts or their general accounts to eliminate the need to refund excessive contributions and solicit new, permissible contributions.<sup>38</sup> Now that national party committees may accept contributions into party segregated accounts, they can receive designated contributions that exceed the limit for the designated account but which would be permissible if designated for a different account of the party. Accordingly, any new regulations should allow national party committees to obtain written redesignations of contributions, in whole or in part, specifically designated to accounts by contributors.<sup>39</sup> The regulations should permit national party committees to obtain such written redesignations at any time in the calendar year as long as the donors have not reached the contribution limits to the accounts to which the contributions will be redesignated.<sup>40</sup>
- *Allocation of Expenses.* As part of any rulemaking, the Commission should update 11 C.F.R. § 106.5 to address the allocation of expenses between national party committees' general accounts and their segregated accounts.<sup>41</sup> The revised regulation should provide national party committees flexibility, allowing them to allocate expenses based on any reasonable basis. This may include – but should not be limited to – a formula based on the funds received, or by calculating on a monthly basis the amount of spending attributable to specific accounts and making corrective transfers as needed. Finally, regulations should make clear that national party committees do not need to allocate expenses paid only from their general accounts.<sup>42</sup>
- *Administrative and Conforming Edits.* The FEC should thoroughly review its regulations and make all necessary administrative and conforming edits in order to, for example, remove any dead-letter regulations or obsolete cross-references.

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In closing, the RNC appreciates the opportunity to comment and again implores the Commission, should it decide to commence this rulemaking, to live up to its promises to provide some needed stability to political parties by undertaking it in an effort to provide relief to political party committees – the most transparent, accountable, and grassroots-driven organizations in our democratic system. Any effort through rulemakings to further constrain party committee operations, including with respect to the administration of the new segregated

<sup>38</sup> Cf. 11 C.F.R. § 110.1(b)(5) (redesignation of contributions to an authorized political committee).

<sup>39</sup> Cf. Advisory Opinion 2010-18 (Minn. Democratic-Farm-Labor Party) (providing that state party could ask donors to recount fund to redesignate their recount fund donations as contributions to party committee's general federal operating account).


<sup>40</sup> See Petition at 13–14.

<sup>41</sup> Cf. Advisory Opinion 2010-14 (DSCC) at 2 (providing that national party committee may “allocate the cost of certain expenses that are attributable to both recount activities and campaign activities between the main account that it uses for campaign activities . . . and its recount fund”).

<sup>42</sup> See Petition at 14–15.

accounts, would prove counterproductive and merely add to the litany of concerns party committees already face.

Sincerely,



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Republican National Committee



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